



EXHIBIT 3  
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SB SB 305

One South Montana Avenue, Suite M1 · Helena, MT 59601  
Phone: 406-443-4032 · Fax: 406-443-4220 · Toll Free: 800-477-1864  
Email: mtmar@montanarealtors.org · Web: www.montanarealtors.org

## Bill Memo

Senate Bill 305 as amended – Revise subdivision and platting act  
Sponsor: Sen. Bruce Tutvedt

## Hearing:

House Local Government Committee  
Mar. 12, 2009, Room 172

## Introduction

Senate Bill 305, as amended, reinforces the review time limits enacted by Senate Bill 116 from the 2005 Legislature to enhance predictability and certainty in the review process for applicants, local governments, and the public. Unfortunately, uncertainty and unpredictability has resulted because some local governments have not complied with the time limits. The amended version of SB 305 simply creates a financial penalty imposed on local governments that fail to comply with the deadlines. Other states have varying penalties for failure to comply with deadlines. Moreover, SB 305 also requires local governments that require an exaction for the extension of capital facilities to use the funds for the improvement for which they were required. The amendments proposed in SB 305 are necessary to reinforce and enhance the predictability and consistency of the review process enacted by Senate Bill 116 from the 2005 Legislature.

## Analysis by Section

**Section 1.** Section 76-3-510, MCA, is amended to read:

**"76-3-510. Payment for extension of capital facilities.** (1) A local government may require a subdivider to pay or guarantee payment for part or all of the costs of extending capital facilities related to public health and safety, including but not limited to public roads, sewer lines, water supply lines, and storm drains to a subdivision. The costs must reasonably reflect the expected impacts directly attributable to the subdivision. A local government may not require a subdivider to pay or guarantee payment for part or all of the costs of constructing or extending capital facilities related to education.

(2) All fees, costs, or other money paid by a subdivider under this section must be expended on the capital facilities for which the payments were required."

**RATIONALE:** Often, subdividers are required to pay or guarantee payment of a significant sum of money for capital improvements required by their subdivision; however, the needed capital improvements which served as the basis for the fee, may never be constructed. This is unacceptable because it strongly suggests, in violation of subsection (1), that there were no impacts directly attributable to the subdivision to base the required exaction upon.

This kind of pattern also defeats the long-accepted goal that development only "pay its way." If subdividers pay for improvements ostensibly necessitated by their subdivisions, and if those improvements are never made, then development

is not paying for itself, but is probably paying to correct existing deficiencies that may not even be attributable to the subdivision.

Finally, the rationale behind part 510 is that it is fair to require development to pay for certain amenities because the benefits of those amenities inure directly to the development itself. When, as often occurs now, subdividers pay for improvements, the benefits of which are never felt by the subdivision, the fundamental fairness of part 510 is destroyed.

**Section 2.** Section 76-3-604, MCA, is amended to read:

**"76-3-604. Review of subdivision application -- review for required elements and sufficiency of information.** (1) (a) Within 5 working days of receipt of a subdivision application submitted in accordance with any deadlines established pursuant to 76-3-504(3) and receipt of the review fee submitted as provided in 76-3-602, the reviewing agent or agency shall determine whether the application contains all of the listed materials as required by 76-3-504(1)(a) and shall notify the subdivider or, with the subdivider's written permission, the subdivider's agent of the reviewing agent's or agency's determination.

(b) If the reviewing agent or agency determines that elements are missing from the application, the reviewing agent or agency shall identify those elements in the notification.

(2) (a) Within 15 working days after the reviewing agent or agency notifies the subdivider or the subdivider's agent that the application contains all of the required elements as provided in subsection (1), the reviewing agent or agency shall determine whether the application and required elements contain detailed, supporting information that is sufficient to allow for the review of the proposed subdivision under the provisions of this chapter and the local regulations adopted pursuant to this chapter and shall notify the subdivider or, with the subdivider's written permission, the subdivider's agent of the reviewing agent's or agency's determination.

(b) If the reviewing agent or agency determines that information in the application is not sufficient to allow for review of the proposed subdivision, the reviewing agent or agency shall identify the insufficient information in its notification.

(c) A determination that an application contains sufficient information for review as provided in this subsection (2) does not ensure that the proposed subdivision will be approved or conditionally approved by the governing body and does not limit the ability of the reviewing agent or agency or the governing body to request additional information during the review process.

(3) The time limits provided in subsections (1) and (2) apply to each submittal of the application until:

(a) a determination is made that the application contains the required elements and sufficient information; and

(b) the subdivider or the subdivider's agent is notified.

(4) After the reviewing agent or agency has notified the subdivider or the subdivider's agent that an application contains sufficient information as provided in subsection (2), the governing body shall approve, conditionally approve, or deny the proposed subdivision within 60 working days, based on its determination of whether the application conforms to the provisions of this chapter and to the local regulations adopted pursuant to this chapter, unless:

(a) the subdivider and the reviewing agent or agency agree to an extension or suspension of the review period, not to exceed 1 year; or

(b) a subsequent public hearing is scheduled and held as provided in 76-3-615.

(5) If the governing body fails to comply with the time limits under this section, the governing body shall pay to the subdivider a financial penalty of \$50 per lot per month or a pro rata portion of a month, not to exceed the total amount of the subdivision review fee collected by the

governing body for the subdivision application, until the governing body denies, approves, or conditionally approves the subdivision.

~~(5)~~(6) If the governing body denies or conditionally approves the proposed subdivision, it shall send the subdivider a letter, with the appropriate signature, that complies with the provisions of 76-3-620.

~~(6)~~(7) (a) The governing body shall collect public comment submitted at a hearing or hearings regarding the information presented pursuant to 76-3-622 and shall make any comments submitted or a summary of the comments submitted available to the subdivider within 30 days after conditional approval or approval of the subdivision application and preliminary plat.

(b) The subdivider shall, as part of the subdivider's application for sanitation approval, forward the comments or the summary provided by the governing body to the:

(i) reviewing authority provided for in Title 76, chapter 4, for subdivisions that will create one or more parcels containing less than 20 acres; and

(ii) local health department or board of health for proposed subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres.

~~(7)~~(8) (a) For a proposed subdivision that will create one or more parcels containing less than 20 acres, the governing body may require approval by the department of environmental quality as a condition of approval of the final plat.

(b) For a proposed subdivision that will create one or more parcels containing 20 acres or more, the governing body may condition approval of the final plat upon the subdivider demonstrating, pursuant to 76-3-622, that there is an adequate water source and at least one area for a septic system and a replacement drainfield for each lot.

~~(8)~~(9) (a) Review and approval, conditional approval, or denial of a proposed subdivision under this chapter may occur only under those regulations in effect at the time a subdivision application is determined to contain sufficient information for review as provided in subsection (2).

(b) If regulations change during the review periods provided in subsections (1) and (2), the determination of whether the application contains the required elements and sufficient information must be based on the new regulations."

**RATIONALE: At present, there are no penalties for ignoring or otherwise failing to comply with the timelines set forth under this section. As a direct result, local governments can and often do ignore these timelines, to the great detriment of the applicant. When this happens, the applicant has absolutely no recourse other than the courts, which is hardly a remedy when you consider the time it takes to obtain a decision. This amendment addresses the problem by inserting a reasonable penalty for failure to comply with statutorily-mandated timelines. The penalty is a fine which cannot exceed the total application fee collected and is sufficient to deter non-compliance. Real estate is the primary asset for many Montana families so it is imperative that the subdivision process be fair and predictable across the state.**

**Section 3.** Section 76-4-125, MCA, is amended to read:

**"76-4-125. Review of subdivision application -- land divisions excluded from review.** (1) Except as provided in subsection (2), an application for review of a subdivision must be submitted to the reviewing authority. The review by the reviewing authority must be as follows:

(a) At any time after the developer has submitted an application under the Montana Subdivision and Platting Act, the developer shall present a subdivision application to the reviewing authority. The application must include preliminary plans and specifications for the

proposed development, whatever information the developer feels necessary for its subsequent review, any public comments or summaries of public comments collected as provided in 76-3-604(6)(7), and information required by the reviewing authority. Subdivision fees assessed by the reviewing authority must accompany the application. If the proposed development includes onsite sewage disposal facilities, the developer shall notify the designated agent of the local board of health prior to presenting the subdivision application to the reviewing authority. The agent may conduct a preliminary site assessment to determine whether the site meets applicable state and local requirements.

(b) Except as provided in 75-1-205(4) and 75-1-208(4)(b), the department shall make a final decision on the proposed subdivision within 60 days after the submission of a complete application and payment of fees to the reviewing authority unless an environmental impact statement is required, at which time this deadline may be increased to 120 days. The reviewing authority may not request additional information for the purpose of extending the time allowed for a review and final decision on the proposed subdivision. If the department approves the subdivision, the department shall issue a certificate of subdivision approval indicating that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction.

(2) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade the provisions of this part, are not subject to review:

(a) the exclusions cited in 76-3-201 and 76-3-204;

(b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that water or sewage disposal facilities may not be constructed on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision;

(c) divisions made for purposes other than the construction of water supply or sewage and solid waste disposal facilities as the department specifies by rule;

(d) divisions located within jurisdictional areas that have adopted growth policies pursuant to chapter 1 or within first-class or second-class municipalities for which the governing body certifies, pursuant to 76-4-127, that adequate storm water drainage and adequate municipal facilities will be provided; and

(e) subject to the provisions of subsection (3), a remainder of an original tract created by segregating a parcel from the tract for purposes of transfer if:

(i) the remainder is served by a public or multiple-user sewage system approved before January 1, 1997, pursuant to local regulations or this chapter; or

(ii) the remainder is 1 acre or larger and has an individual sewage system serving a discharge source that was in existence prior to April 29, 1993, and, if required when installed, the system was approved pursuant to local regulations or this chapter.

(3) Consistent with the applicable provisions of 50-2-116, a local health officer may require that, prior to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be segregated from the remainder referenced in subsection (2)(e)(ii), the remainder include acreage or features sufficient to accommodate a replacement drainfield."

**RATIONALE: This amendment updates an internal citation based on amendments in the previous section.**

**NEW SECTION. Section 11. Effective date.** [This act] is effective on passage and approval.